IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITION NO. 26 OF 2004

Shri Vijaykumar V. Naik,
major of age, s/o
Vishwanath Y. Naik,
r/o H.No.74, Warkhandem,
Ponda, Goa. ...Petitioner

Versus

Sharmila alias Vijaya V.
Naik, major of age, d/o
Nagesh Morajkar, r/o
H.No.38/8, Keniwada,
Ansabhat, Mapusa,
Bardez, Goa. ...Respondent.

Shri A. B. D'Sa, advocate for the petitioner.

Shri S. D. Padiyar, advocate for the respondent.

CORAM : D. G. KARNIK, J.

DATE : 17th March, 2004.

ORAL JUDGMENT

Rule. By consent, Rule made returnable forthwith.

2. Though in the petition the petitioner had challenged two Orders, both dated 11th November, 2003, the learned counsel for the petitioner restricts the challenge to the Order below Exhibit 36 in the suit (pages 20 to 24 of the petition). The challenge to the other Order is given up.

3. The petitioner, husband, has filed a suit in the Court of the Civil Judge, Senior Division, Ponda, bearing Matrimonial Civil Suit no.22/2000/A, for a declaration that the marriage between him and the respondent performed on 16th February, 1998, in a Temple is null and void on the ground

that the marriage has not been registered as required under Article 3 of the Family Laws. By filing a written statement, the respondent contested the suit and also made a counter claim for restitution of conjugal rights. In the original suit, the petitioner has averred that the respondent was mentally ill. Initially, an issue was framed by the Court regarding the mental health of the respondent. However, on application of the respondent, the said issue was deleted on the ground that the alleged mental illness was not relevant for considering the case of the petitioner of the nullity of the marriage on the ground of non-registration. After deletion of the issue regarding mental health of the respondent, the respondent made another application at Exhibit 36 in the suit, for striking of the pleadings in the plaint regarding the mental health of the respondent, on the ground that the said pleadings were vexatious and irrelevant for the purpose of deciding the issues involved in the matter, as the main issue was only about the validity of the marriage on the ground of non-registration. The said application was allowed by the Court by an order dated 11th November, 2003, which is impugned in this Writ Petition.

4. Learned counsel for the petitioner fairly concedes that the issue about the mental health of the defendant is irrelevant for the purpose of considering as to whether the marriage between the petitioner and the respondent is invalid on the ground of non-registration. He,

however, submits that the respondent has made a counter-claim for restitution of conjugal rights and in defence the plaintiff is entitled to contend that a decree for restitution of conjugal rights should not be granted as the respondent is mentally ill. He further states that in the written statement filed to the counter-claim the petitioner has taken up the ground about the mental health and, if necessary, he could elaborate that ground by means of an amendment. Needless to say that if such an application for amendment is made, it would be considered on its own merits. Pleadings as to the mental health of the respondent are irrelevant for the purpose of considering the validity of the marriage on the ground of non-registration. The trial Court was, therefore, right in allowing the application of the respondent to strike down the pleadings regarding the mental health of the respondent from the plaint filed by the petitioner. It is however, clarified that striking of the pleadings regarding mental health of the respondent from the plaint, would not prevent the petitioner from taking up this ground as a defence to the counter-claim made by the respondent. Whatever the worth of that particular defence would be considered at the stage of trial. Subject to this clarification, I find no error in the Order of the trial Court.

5. Hence, the Writ Petition is rejected. Rule

discharged, with no order as to costs.

D. G. KARNIK, J.

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